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In Pro Se

FILE ON DEMAND
FOR THE RECORD

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Thomas M. Waitkus, individual,

Plaintiff,

vs.

West Asset Management, Inc., a
corporation, et al,

Defendant(s).

Case No. CV-15-01124-PHX-ROS

PROPOSED CASE
MANAGEMENT PLAN
Fed. R. Civ P. 26(f)

PROPOSED CASE MANAGEMENT PLAN

- A. **Meeting:** *Pro Se* Plaintiff Thomas M. Waitkus ("Plaintiff"), files this PROPOSED CASE MANAGEMENT PLAN as a result of communication with Defendant, West Asset Management, Inc. ("WAM") Counsel of Record, Damian P. Richard.
- B. **Initial Disclosures:** Plaintiff mistakenly filed his FRCP 26(a)(1) disclosure on 8/6/2015 (*See Docket #7*). Plaintiff will file a replacement initial disclosure on or before the deadline set by the parties. Plaintiff respectfully requests this Court to instruct the Clerk of the

1 Court to strike Document #7 of the docket as it was filed in error. The Parties are to file initial
2 disclosures on or before October 2, 2015.

3 C. **Parties:** *Pro Se* Plaintiff Thomas M. Waitkus and Defendant, West Asset Management,
4 Inc., et al., counsel of record is Damian P. Richard. Other parties may be added upon
5 completion of discovery.

6 D. **Nature of Case:** Plaintiff's complaint arises from numerous calls he received on his
7 cellular phone number from Defendant using an automatic telephone dialing system ("ATDS")
8 without the express consent of Plaintiff and absent a business relationship between the parties,
9 in violation of the TCPA at 47 U.S.C. § 227 (b)(1) and 47 U.S.C. § 227 (c)(5). Plaintiff also
10 contends that the calls were harassing and abusive, therefore violating the FDCPA at 15 U.S.C.
11 § 1692 d. Defendant admits to placing calls to Plaintiff's phone in an attempt to collect an
12 alleged debt, however, Defendant claims to have Plaintiff's express prior consent to place calls
13 to Plaintiff. Defendant contends all calls were initiated without the use of ATDS equipment
14 having the capacities defined in the TCPA. Defendant further denies calls made to Plaintiff
15 violated the FDCPA as harassing or abusive.

16 E. **Jurisdiction:** Jurisdiction exists pursuant to 28 U.S.C. § 1391(b)

17 F. **Service Status:** Plaintiff has served Defendant. Defendant has filed an Answer.

18 G. **Possible Joinder of Additional Parties and/or Amended Pleadings:** The Parties do
19 not anticipate joining additional parties at this time. Plaintiff may amend his complaint during
20 or following discovery. Defendant does not anticipate filing any amended pleadings.

21 H. **Anticipated Motions:** Plaintiff anticipates filing a motion for summary judgment as
22 Plaintiff did not give Defendant his prior express consent to contact him via his cellular phone,
23 and the parties had no business relationship prior to the initial phone call.

Defendant does not anticipate filing any motions at this time.

I. **Reference to Magistrate Judge:** The Parties consider a Magistrate Judge may be suitable for settlement, however, Plaintiff refuses to waive his right to a trial by jury at this time.

J. **Related Cases:** There are no related cases.

K. **Anticipated Discovery:** Plaintiff anticipates needing discovery on the following items/issues:

1. All correspondence with Plaintiff, relating to Plaintiff; Any and all recordings, audio, video or still photographs, relating to the Plaintiff;
2. Any electronic media relating to Plaintiff;
3. Defendant's internal account notes, records, logs, transcripts, and bates records relating to Plaintiff; All electronically stored information ("ESI") in an acceptable form. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought; Metadata;
4. The identity of individuals with special knowledge of Defendant's computer and telephone systems;
5. Any and all correspondence with third parties relating to Plaintiff or any alleged accounts of the Plaintiff;
6. Any and all information relating to and including, but not limited to, computers, software, hardware, owners manuals, instruction manuals, photos, and a complete description of telephone equipment or automated telephone dialing systems used by

1 Defendant to initiate or make phone calls to Plaintiff during the time Defendant placed
2 calls to Plaintiff's wireless phone;

3 7. Defendant anticipates needing discovery on the following issues: Plaintiff's
4 claimed expenses;

5 8. Phone records of Plaintiff's subscription service in connection with the use of
6 Plaintiff's wireless phone;

7
8 L. **Proposed Schedule**

- 9 i. Initial Disclosures: 10/2/2015
10 ii. Motions to Add Parties or Amend Pleadings: 12/2/2015
11 iii. Disclosure of Expert Reports: 3/11/2016
12 iv. Discovery Deadline: 4/12/2016
13 v. Dispositive Motions: 5/2/2016
14 vi. Meeting *In Person* to Prepare Joint Final Pretrial Statement : 8/19/2016
15 vii. Joint Final Pretrial Statement: 8/31/2016
16 viii. Trial term begins; 10/12/2016
17 ix. Estimated length of trial: 2 days
18

19
20 M. **Jury Request**

21 Plaintiff has demanded a trial by jury; it is not contested.

22 N. **Prospects of Settlement**

23 The Parties have initiated informal settlement discussions. A settlement conference
24 may be requested upon completion of initial discovery. The parties anticipate that a
25 preliminary pre-trial conference is not needed at this time because they expect to promptly
26 resolve these disputes without assistance of the Court.
27
28

O. **Other Matters**

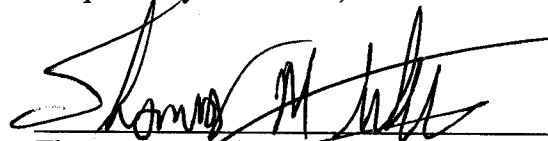
Plaintiff mistakenly filed a document titled "PLAINTIFF'S RULE 26(a)(1) DISCLOSURES" which is recorded in the docket as *document #7* and recorded as "REPORT of Rule 26(f)". Referenced document does not satisfy the requirements of the proposed Rule 26(f) Conference of the Parties, since it preceded the Case Management Report, therefore, Plaintiff respectfully requests that document #7 of the docket be stricken from the record at this time. Plaintiff will file an amended or revised version of his Rule 26(a)(1) disclosures as indicated no later than October 2, 2015.

Plaintiff notified and provided a copy of this proposed report to Defendant, however, Defendant was unavailable to approve this Proposed Case Management Plan, therefore, Plaintiff files without Defendant's signature.

Plaintiff has attempted to carefully draft this report in compliance with the FRCP, however, Plaintiff respectfully requests this Court consider Plaintiff's *pro se* status and less experience in these matters and to recognize substance is more important than form.

Dated this 4th day of September, 2015

Respectfully Submitted,


Thomas M. Waitkus, Plaintiff
in pro se

CERTIFICATE OF SERVICE

This is to certify that an original and copy of PROPOSED CASE MANAGEMENT PLAN
(USDC AZ, Case # CV-15-01124-PHX-ROS) has been sent to the following:

ORIGINAL and **COPY** of the foregoing

Sent via first class mail and filed with the Clerk of the Court:

Brian D. Karth, Clerk of the Court
401 W Washington Street, Suite 130, SPC 1
Phoenix, AZ 85003-2118

COPY mailed to:

SESSIONS. FISHMAN, NATHAN & ISRAEL, L.L.P.
Attn: Damian P. Richard, Esq. (#028477)
1545 Hotel Circle South, Suite 150
San Diego, CA 92108-3426

Sent via United States Postal Service® First-Class Mail®.

Dated: September 4, 2015

By:  _____